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BEFORE THE INSURANCE COMMISSIONER
OF THE STATE OF WASHINGTON

In the Matter of the Application regarding
the Conversion and Acquisition of Control
of Premera Blue Cross and its Affiliates

OIC Docket No. G02-45

PREMERA’S OPPOSITION TO MOTIONS TO INTERVENE

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8 OF THE STATE OF WASHINGTON

9 In the Matter of the Application regarding
10 the Conversion and Acquisition of Control
11 of Premera Blue Cross and its Affiliates
12

OIC Docket No. G02-45

PREMERA'S OPPOSITION TO
MOTIONS TO INTERVENE

13
14 **I. EXECUTIVE SUMMARY**

15 More than 50 organizations have petitioned to intervene in the adjudicative hearing
16 to be held in connection with the proposed reorganization of PREMERA and Premera
17 Blue Cross (collectively, "Premera"). As the number and variety of would-be intervenors
18 demonstrates, the reorganization of Premera to a for-profit structure has attracted
19 widespread public attention. The Washington Insurance Commissioner ("Commissioner")
20 has made it clear that he is "committed to meaningful public involvement as part of our
21 regulatory review process." Press Release (May 31, 2002).
22

23 Although the would-be intervenors do not qualify under the legal standards to
24 intervene in the adjudicative hearing, they can participate appropriately in the regulatory
25 review process. These individuals and organizations do not need formal status as

PREMERA'S OPPOSITION TO
MOTIONS TO INTERVENE - 1

1 “parties” in order to present information and express their views. The Commissioner and
2 the Office of the Insurance Commissioner (“OIC”) have provided extensive opportunities
3 for public participation, including holding public meetings, providing a dedicated email
4 link on the OIC web site, making Premera’s filings available to the public, and inviting
5 public comment on the proposed reorganization. Granting intervention as parties in the
6 adjudicative hearing, therefore, is wholly unnecessary. More importantly, it would invite
7 administrative chaos.
8

9 Before granting a petition for intervention, the Commissioner must determine three
10 things: first, that the petitioner qualifies as an intervenor under applicable law; second,
11 that the intervention sought is in the interests of justice; and third, that such intervention
12 will not impair the orderly and prompt conduct of the proceedings. RCW 34.05.443(1). If
13 a petition fails to meet any one of these tests, it must be denied.
14

15 In this response, Premera will demonstrate that the petitioners here cannot satisfy
16 the first test, much less the second and third. The key points are these:

- 17 • The OIC Staff And Qualified Experts Are Already Conducting An Exhaustive
18 Review. The OIC and other regulators have retained nationally recognized experts
19 and consultants with experience in conversion proceedings. The regulators and
20 their experts are conducting a comprehensive investigation and review of the
21 proposed reorganization, including impacts on Alaska citizens. The Commissioner
22 does not need the guidance of would-be intervenors.
23
24
25

1 • Members Of The Public Have Ample Opportunity To Contribute Their Views.

2 The petitioners and other members of the public will have many opportunities to
3 provide oral and written input, including expert reports and studies, before the
4 administrative record is closed. Petitioners do not have to be parties in the
5 Adjudicative Hearing to make their concerns known to the OIC and the
6 Commissioner.
7

8 • Interests That Petitioners Share With All Members Of The Public Are Not Legally

9 “Significant.” A person does not have a “significant interest” that can be
10 determined “to be affected”¹ by the hearing if that person’s interest is no different
11 from that of the public in general and is already represented by public agencies
12 such as the OIC and Attorney General.
13

14 • Conferring Party Status Is Unjust To Unrepresented Members Of The Public.

15 Granting party status to a self-appointed group of petitioners would be an injustice
16 not only to Premera, but also to its policyholders, who would benefit from a
17 prompt, cost-effective resolution of this process.
18

19 • Special Concerns Outside The Scope Of The Holding Company Acts Are Not

20 Legally “Significant.” An interest cannot be regarded as legally “significant” if it
21 is a special interest or is not relevant to the statutory criteria for review of the
22 proposed reorganization.
23

24 _____
25 ¹ RCW 48.31B.015(4)(b); RCW 48.31C.030(4).

- 1 • The Interests Of The Citizens Of Alaska Are Protected. The Alaska Director of
2 Insurance (“Alaska Director”) is reviewing the proposed reorganization in
3 cooperation with the Washington Commissioner. Experienced experts have been
4 retained specifically to protect the interests of Alaska citizens in the issues raised
5 by the proposed reorganization, including the allocation of assets to the new
6 Alaska charitable organization.
7
- 8 • Intervention Would Create Chaos In The Adjudicative Hearing. Authorizing the
9 plethora of petitioners to have party status would make control of pre-hearing
10 matters (such as scheduling, discovery, and motions) and the hearing itself
11 virtually impossible. The proceeding is already complex with only two parties, the
12 OIC Staff and Premera. Multiple state agencies, consultants and experts are
13 already involved. Whatever assurances a petitioner for intervention may try to
14 offer to avoid interference with “orderly and prompt” proceedings, there is no way
15 that seven collective intervenor groups, representing the disparate interests of over
16 50 organizations, can be included without destroying order and greatly prolonging
17 the hearing. In addition, granting discovery rights to a broad range of advocacy
18 groups who seek access to proprietary competitive information, and to providers
19 seeking Premera’s sensitive cost reimbursement data, would create huge problems
20 in managing access to and handling confidential and competitive information and
21 raise serious antitrust concerns.
22
23

24 For all these reasons, Premera urges the Commissioner to deny the motions to intervene.
25

1 **II. STATEMENT OF FACTS AND STATUTORY FRAMEWORK**

2 **A. Premera's Form A Statement.**

3 On May 30, 2002, Premera advised the Washington Office of the Insurance
4 Commissioner ("OIC") that it intends to reorganize its non-profit affiliates to for-profit
5 status. Premera has filed its "Statement Regarding the Acquisition of Control of a
6 Domestic Health Carrier and Domestic Insurer" ("Form A Statement"), the formal
7 statement required for Commissioner approval of the reorganization.² Premera
8 concurrently filed the Form A Statement with the OIC and the Alaska Division of
9 Insurance, as requested by the state regulators in Washington and Alaska.
10

11 As part of the reorganization, 100 per cent of the initial stock of the newly formed
12 publicly traded corporation at the time of conversion will be transferred to a charitable
13 foundation. The proceeds of the sale of the stock will be distributed to newly formed
14 charitable organizations created to make grants in support of health initiatives for the
15 benefit of the citizens of Washington ("Washington Charitable Organization") and Alaska
16 (the "Alaska Charitable Organization") (collectively, "Charitable Organizations").
17

18 **B. OIC Review And Investigation.**

19 The Insurance Commissioner's review of Premera's proposed reorganization is
20 governed by the Holding Company Act for Health Care Service Contractors and Health
21 Maintenance Organizations, RCW chapter 48.31C, (the "Health Carrier Act") and the
22

23 _____
24 ² Premera made its initial Form A Statement filing on September 17, 2002, and
25 supplemented its filing on September 27, 2002. Premera further supplemented the Form A
Statement on October 25, 2002.

1 Insurer Holding Company Act (the “Insurer Act”), RCW chapter 48.31B, (collectively
2 “Holding Company Acts” or “Acts.”).

3 The OIC Staff is now reviewing the Form A Statement. To assist in its
4 investigation, the OIC has retained nationally recognized experts with extensive
5 experience in health care and conversion transactions. The OIC has engaged consultants
6 in investment banking (The Blackstone Group), actuarial services
7 (PriceWaterhouseCoopers), accounting and tax (PriceWaterhouseCoopers), and legal
8 services (Cantilo & Bennett). These consultants have extensive experience in the health
9 care industry from a multitude of perspectives, including, among others, those of
10 physicians and other health care practitioners, academic medical centers, and nursing
11 facilities.³ The OIC experts have already propounded more than 130 document requests
12 to Premera on a wide range of subjects, as well as numerous additional written and oral
13 requests for information. As of November 15, 2002, Premera had already provided more
14 than 16,000 pages of documentation for review by the consultants. *See* Premera Status
15 Report at 3 (Nov. 22, 2002). In addition to requiring production of documents and written
16 responses to data requests, the OIC’s consultants have conducted extensive interviews
17 with Premera’s executives.
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22 _____
23 ³ See PriceWaterhouseCoopers (PWC) Proposal to Provide Consulting Services to the
24 Washington State Office of Insurance Commissioner, September 4, 2002, at 2. The PWC
25 proposal states that numerous members of their healthcare practice group would be assigned to
work on the Premera reorganization project team, led by the head of PWC’s Government
Healthcare Consulting Practice.

1 **C. Alaska Review and Investigation.**

2 The Alaska Director and the staff of the Alaska Division of Insurance are also
3 conducting a review of the Form A Statement and documents pertinent to Alaska issues.
4 Legal, actuarial, financial, and economic experts with extensive experience in conversion
5 transactions and health care issues have been retained to advise the Alaska Director in
6 various areas, including investment banking (Signal Hill Capital Group), actuarial services
7 (Reden-Anders), economics (Peterson Consulting), and legal services (LeBoeuf, Lamb,
8 Greene & McRae). Among other issues, the Alaska experts are reviewing the impact of
9 the proposed reorganization on Alaska policyholders, the structure of the Alaska
10 Charitable Organization, and the appropriate allocation of proceeds between the
11 Washington and Alaska Charitable Organizations.
12

13 **D. Washington Attorney General Review.**

14 Under the Holding Company Acts, the Washington Attorney General is authorized
15 to review any competitive impacts of the proposed reorganization. RCW
16 48.31C.030(5)(a)(ii). In addition, the Washington Attorney General is charged with
17 reviewing plans of distribution of assets of non-profit corporations. RCW 24.03.230.
18

19 The Office of the Washington Attorney General (“AGO”) recently acknowledged
20 its specific responsibilities with respect to Premera’s proposed reorganization. *See*
21 Memorandum Re: Premera Conversion Process (Oct. 15, 2002) (“AGO Memorandum”).
22 The AGO has assigned three attorneys to assist the OIC, including the Antitrust Division
23 Chief and a former leader of the Antitrust Division. *See* Letter, D. Walsh, Deputy
24 Attorney General to J. Odiorne, Deputy Insurance Commissioner (Nov. 19, 2002). The
25

1 AGO has also retained Dr. Keith Leffler, a preeminent economist at the University of
2 Washington with many years' experience in antitrust matters. *Id.* at 1.

3 The AGO attorneys and Dr. Leffler have offered to work with and advise the OIC
4 review team on antitrust issues, cooperate with the OIC's experts, provide assistance to
5 the OIC in developing expert testimony, and be available for cross-examination. *Id.*
6 Representatives of the AGO are also coordinating interviews with Premera for staff
7 attorneys and Dr. Leffler to obtain information and formulate data requests. Letter J.
8 Ellis, Special Assistant Attorney General, to J. Cake, Premera Blue Cross (Dec. 4, 2002).
9 The AGO has asked for information, and Premera is preparing responses to those data
10 requests.
11

12 The AGO will also advise the Commissioner and OIC Staff with respect to the
13 distribution of any assets that are subject to charitable limitations. AGO Memorandum at
14 3-4. The AGO is engaged in a review of Premera's plan for distribution of assets "under
15 Washington's Non-Profit Corporation Act and the AGO's common law authority to
16 enforce charitable trusts." Letter, D. Walsh, Deputy Attorney General to J. Odiorne,
17 Deputy Insurance Commissioner (Nov. 19, 2002) at 2. The AGO will be reporting its
18 conclusions to the OIC. *Id.*
19

20 **E. Public Hearings.**

21 The Commissioner held four public meetings on Premera's reorganization during
22 September and October in Seattle, Spokane, Richland, and Vancouver. At these meetings
23 the Commissioner, the Deputy Insurance Commissioner, and the Attorney General or her
24 representative heard extensive testimony from the public, including representatives of
25

1 several organizations seeking to intervene in this proceeding. Written transcripts of the
2 public meetings are available for public review. In addition, the Commissioner has
3 announced that he will sponsor another round of public hearings after the reports of the
4 experts engaged by the OIC Staff are complete, and he will make their reports public.

5
6 The Alaska Director has also held public hearings in Anchorage in October and
7 November, 2002, and he maintains a web site and a toll-free telephone line to accept
8 public comments from citizens of Alaska.

9 **F. Adjudicative Hearing.**

10 In addition to the public meetings, the Commissioner will hold an adjudicative
11 proceeding in connection with his review of the proposed reorganization, resulting in a
12 final administrative order (“Adjudicative Hearing”). *See* First Order: Case Management
13 Order (Oct. 24, 2002) (“First Order”). The Commissioner has designated Premera and the
14 OIC Staff as parties to the Adjudicative Hearing. *Id.* at 2.

15
16 **G. Motions To Intervene.**

17 More than 50 organizations, represented by ten law firms or legal agencies, filed
18 seven petitions seeking to become parties in the Adjudicative Hearing. They include two
19 hospital associations, the Washington State Hospital Association (“WSHA”) and
20 Association of Washington Public Hospital Districts (“AWPHD”) (collectively, the
21 “Hospital Associations”); the University of Washington (“UW”); the Washington State
22 Medical Association (“Medical Association”); a coalition of 11 organizations advocating
23 for welfare recipients, unions, health groups, physicians, churches, and various other
24 constituencies (“Advocacy Groups”); the Washington Association of Community &
25

1 Migrant Health Centers, representing 36 different organizations (“Health Centers
2 Association”); and the University of Alaska, United Way of Anchorage, John Garner, and
3 Anchorage Neighborhood Health Center (“Alaska Petitioners”) (collectively,
4 “Petitioners”).

5
6 Petitioners seek to be heard on all issues, to be accorded all the rights of an
7 “interested party,” and to engage in discovery, presentation of expert testimony, review of
8 expert materials, and cross-examination.⁴

9 III. LEGAL ANALYSIS

10 A. Petitioners Must Satisfy The Legal Criteria For Intervention Stated In The 11 APA.

12 Petitioners must satisfy the legal requirements to intervene as set out in the
13 Washington Administrative Procedure Act, chapter 34.05 RCW (“APA”). The APA
14 governs adjudicative proceedings in the state of Washington. RCW 34.05.410. The
15 Commissioner properly invoked the APA, along with the Holding Company Acts, as his
16 authority for holding the Adjudicative Hearing. First Order at 2. Petitioners recognized
17 the applicable legal standard by filing their motions to intervene under the APA.

18 B. Petitioners Do Not Meet The APA Requirements For Intervention. 19

20 Petitioners do not meet the legal requirements for intervention under the APA.

21 The relevant provisions state:
22

23
24 ⁴ See, e.g., Hospital Associations’ Motion for Leave to Intervene (“Hosp. Ass’n. Pet.”) at 5;
25 Medical Association’s Motion to Intervene (“Med. Ass’n Pet.”) at 13; Advocacy Groups’ Motion
to Intervene (“Adv. Grps. Pet.”) at 11-12. Cf. University of Washington Petition for Leave to
Intervene (“UW Pet.”) at 9 (seeking limited, though still extensive, rights to participate).

1 The presiding officer may grant a petition for intervention at any time,
2 upon determining that the petitioner qualifies as an intervenor under any
3 provision of law and that the intervention sought is in the interests of
justice and will not impair the orderly and prompt conduct of the
proceedings.

4 RCW 34.05.443(1). Petitioners fail on all three counts: (1) Petitioners do not qualify as
5 intervenors under the provisions of the Holding Company Acts or any other provision of
6 law; (2) the intervention sought will impair the orderly and prompt conduct of the OIC
7 proceedings; and (3) intervention is not in the interests of justice. Absent a legal basis for
8 intervention, Petitioners' motions to intervene should, therefore, be denied.
9

10 **1. Petitioners Cannot Demonstrate Any "Significant Interest" Affected
By The Adjudicative Hearing.**

11 Under the APA, Petitioners must qualify for intervention under relevant provisions
12 of Washington law. RCW 34.05.443. Intervention is not allowed when moving parties
13 fail to demonstrate an interest specifically protected by law. *Westerman v. Cary*, 125
14 Wn.2d 277, 303, 892 P.2d 1067 (1994) ("the interest which the intervenor seeks to
15 protect must be one recognized by law"), quoting *In re Dependency of J. H. v. Lutheran*
16 *Social Serv.*, 117 Wn.2d 460, 468, 815 P.2d 1380 (1991).
17

18 Here, the relevant "provisions of law" are found in the Holding Company Acts.
19 RCW 48.31B.015(4)(b); RCW 48.31C.030(4). To qualify for intervention, Petitioners
20 must demonstrate a legally "significant interest" that is affected by the Adjudicative
21 Hearing. See RCW 48.31C.030(5)(a); RCW 48.31B.015(4)(a).
22

23 The relevant Holding Company Acts provisions require:

24 At the [Adjudicative Hearing] . . . any person whose significant interest is
25 determined by the commissioner to be affected may present evidence,
examine and cross-examine witnesses, and offer oral and written

1 arguments, and in connection therewith may conduct discovery
2 proceedings in the same manner as is allowed in the superior court of this
state.

3 RCW 48.31B.015(4)(b); RCW 48.31C.030(4) (emphasis added).

4 This is not an easy standard to meet. By inserting the qualifier “significant” before
5 the word “interest,” the Washington Legislature expressly made the grounds for
6 intervention under the Washington Holding Company Acts narrower than the Model
7 Insurance Holding Company System Regulatory Act (“Model Act”).⁵ See Model Act
8 § 3(D)(2) (“At the hearing . . . any other person whose interests may be affected shall have
9 the right to present evidence, examine and cross-examine witnesses, and offer oral and
10 written arguments.”). Under the Model Act, any interest – whether “significant” or not –
11 can justify intervention. Under the Washington Acts, the moving party must show that its
12 “significant interest” will be affected.
13

14 Similarly, the Model Act provides the right to intervene based only on a showing
15 that the moving party’s interests “may be affected.” By contrast, the Washington Acts
16 require a determination that the moving party’s significant interest is affected. RCW
17 48.31B.015(4)(b); RCW 48.31C.030(4).
18

19 Petitioners invoke the orders entered in jurisdictions that have less stringent
20 standards for intervention. For example, New Mexico and the District of Columbia have
21

22 ⁵ The Washington Holding Company Acts derive from the Model Act drafted by NAIC.
23 See 3 NATIONAL ASS’N OF INS. COMM’RS, MODEL LAWS REGULATIONS AND GUIDELINES 440-31
24 to 440-32 (2002) (explaining that RCW chapter 48.31B and Substitute House Bill 1792, which
25 became RCW chapter 48.31C, derive from the Model Act); see also Final Bill Report (as enacted),
SHB 1855, at 1 (Jul. 25, 1993) (“The Washington Insurance Code is amended to conform to the
NAIC’s recommended . . . regulatory statutes.”).

1 not adopted Washington's "significant interest" test. *See* Decl. of E. Hamburger, Exs. 8,
2 9.⁶ The law in those jurisdictions requires a "public hearing," but there are no statutory
3 limitations on intervention. N. M. STAT. ANN. § 59A-37-6; D.C. CODE ANN. 1997 § 31-
4 703. Similarly, although the New Hampshire Holding Company Act provides for a public
5 hearing, it does not specify standards for intervention. N.H. REV. STAT. ANN. § 401-B:3.
6 For their part, the Hospital Associations fail to note that, although hospitals were admitted
7 as intervenors in the Anthem Holding Company Act proceeding in Maine, Anthem did not
8 object to the intervention. *In re Application of Associated Hosp. Serv. of Me. d/b/a Blue*
9 *Cross and Blue Shield et al.*, Docket INS-99-14 (Me. Comm'r Ins. Dec. 22, 1999) (order
10 on intervention), *available at* <http://www.state.me.us/pfr/ins/bcdoc136.htm>. These cases
11 thus are inapposite.
12

13
14 In the Kansas conversion case cited by the Hospital Associations, the
15 commissioner admitted intervenors, but strictly limited the participation of the Kansas
16 Hospital Association and the Kansas Medical Society. They were not allowed discovery,
17 were required to combine their presentations at the hearing, were limited to particular
18 issues, were allowed access to documents only subject to protective orders, and were not
19 permitted to participate in any negotiations. *In the Matter of the Conversion &*
20 *Acquisition of Blue Cross & Blue Shield of Kan., Inc.*, Docket No. 3014-DM, slip. op. at
21 5-6 (Kan. Comm'r Ins. Oct. 23, 2001) (order on intervention), *available at*
22

23
24 ⁶ The Advocacy Groups fail to mention that in the District of Columbia case, intervenors'
25 participation was strictly limited to only twenty minutes of oral testimony, written testimony, and

1 http://www.ksinsurance.org/consumers/bcbs/order_on_intervention.pdf. Moreover,
2 intervenors who participated in the agency proceeding in Kansas were denied intervenor
3 status by the court on appeal. *Blue Cross and Blue Shield of Kan., Inc. v. Sebelius*, Nos.
4 02-C-340 and 02-C-341 (Dist. Ct. of Shawnee County, Kan. June 7, 2002), *available at*
5 <http://www.shawneecourt.org/decisions/bcbs-anthem-sebelius.htm>.
6

7 Finally, Petitioners fail to mention orders in states in which intervention was
8 denied. The Wisconsin insurance commissioner in a conversion proceeding denied
9 intervention to various groups, including the University of Wisconsin Medical School, the
10 Medical College of Wisconsin, and a coalition representing ABC for Health, Wisconsin
11 AARP, and the Wisconsin Coalition for Advocacy. *In the Matter of Application for*
12 *Conversion of Blue Cross & Blue Shield United of Wisconsin*, No. 99-C26038 (Me.
13 Comm’r Ins. Nov. 29, 1999) (order on intervention) (“*Wisconsin Order*”). The
14 commissioner denied the motions to intervene because “the movants’ asserted interests do
15 not constitute interests specifically protected under [the statute].” *Id.* at 2. Here as well,
16 Petitioners’ interests are not protected under law, and their motions to intervene should be
17 denied.
18

19 **(a) General Public Concerns Are Not “Significant” Interests**
20 **Justifying Intervention.**

21 An interest that is the same as that of any member of the public is not
22 “significant” for intervention purposes. For this reason, the Washington Utilities and
23 Transportation Commission (“WUTC”) denied intervention to competitors of a
24
25 submission of written questions to be asked at the hearing by the agency’s staff. *Fair Care*

1 regulated company for lack of a “substantial interest” where their interests were the
2 same as other members of the public. *In re U S WEST Communications, Inc.*, No. UT-
3 951425, 1997 Wash. UTC Lexis 26 (1997).⁷

4 In her order denying intervention in the United-Wisconsin conversion, the
5 Wisconsin commissioner stated:
6

7 The potential injury asserted by these parties is no different from potential
8 injury to any member of the general public caused by the agency action or
9 inaction in this proceeding. To allow standing in the instant case would
10 establish a precedent for the agency to admit multiple parties in future
proceedings, each with a specific interest that is one among many to be
considered by the Office in determining the public interest. . . . Therefore,
I have denied their motions to intervene.

11 *Wisconsin Order*, at 2 (emphasis added).⁸

12 Similarly, many of the interests asserted by Petitioners, as described more fully
13 below, are the same as those of anyone concerned about health care in Washington. Their
14 asserted “potential injuries” are “no different from potential injury to any member of the
15 general public.” The relevant issues raised by Petitioners are already part of the statutorily
16 mandated review under the Holding Company Acts. The Commissioner, the OIC Staff,
17 the Attorney General, the Alaska Director – with the advice and assistance of their experts
18 and consultants – are already engaged in investigating Premera’s proposed reorganization.
19

20
21 *Found., A.G. v. D.C. Dep’t of Ins. & Securities Reg.*, 716 A.2d 987, 992 (D.C. 1998).

22 ⁷ See also *Chelan County v. Nykreim*, 146 Wn.2d 904, 935, 52 P.3d 1 (2002) (“An interest
23 sufficient to support standing to sue . . . must be more than simply the abstract interest of the
general public in having others comply with the law.”).

24 ⁸ The commissioner permitted the petitioners to participate in the hearing and general
25 approval process, by allowing them to offer expert testimony, ask questions of BCBS United of
Wisconsin, and discuss the application with the investment-banking firm retained by the Office
the Commissioner of Insurance. *Id.* at 2.

1 Petitioners will not contribute anything to protect the public interest that is not already
2 being vigorously pursued by the regulators.

3 Specifically, Petitioners express concern about health care coverage, the impact of
4 the reorganization on the insurance-buying public, the valuation of Premera's assets,
5 financial aspects of the reorganization, impacts on competition, the effects of the
6 reorganization on subscribers, uses of assets dedicated to support charitable purposes as a
7 result of the reorganization, and a possible future sale of Premera, as well as a general
8 concern, expressed by Alaska Petitioners, about protecting the interests of the citizens of
9 Alaska. The Commissioner, the OIC, and the Attorney General are already addressing
10 these issues as follows:
11

12 • Health Care Coverage. Several Petitioners express concerns
13 about health care coverage.⁹ The Commissioner is required to consider whether
14 reorganization "will substantially increase or will prevent significant deterioration
15 in the availability of health care coverage." RCW 48.31C.030(5)(a)(ii)(B)(II).
16 The OIC Staff is already engaged in a comprehensive investigation of coverage
17 issues. Consulting experts have been selected with "expertise in local and national
18 health care and insurance trends in both the public and private sectors."¹⁰ The
19
20
21
22

23 ⁹ See, e.g., Med. Ass'n Pet. at 10-11; Hosp. Ass'n Pet. at 5; Adv. Grps. Pet. at 8.

24 ¹⁰ OIC Request for Proposals (Aug. 2, 2002) at 1 ("OIC RFP"); PriceWaterhouseCoopers
25 Proposal to Provide Consulting Services to the Washington State Office of Insurance
Commissioner (September 4, 2002) at 2.

1 participation of Petitioners will not enhance the OIC's review of health care
2 related issues that are relevant to the inquiry under the Holding Company Acts.¹¹

3 • Impact On Insurance-Buying Public. The OIC must review
4 whether the reorganization is "likely to be hazardous or prejudicial to the insurance-
5 buying public." RCW 48.31C.030(5)(a)(ii)(C)(IV). The OIC is clearly the agency
6 created to, has the expertise and authority to, and is in fact vigorously exercising its
7 responsibility to assess the impact of the proposed reorganization on the insurance-
8 buying public.¹² The OIC specifically sought experts to render an opinion as to
9
10
11

12 ¹¹ While health care issues are part of the OIC Staff investigation, the Medical Association's
13 litany of provider complaints about insurance industry practices, such as denial of claims, approval
14 for tests, timely payment of claims, and other medical treatment issues have no logical connection
15 with the issues raised by Premera's Form A filing and are outside the scope of statutory criteria to
be considered by the Commissioner under the Washington Holding Company Acts. *See* RCW
48.31C.030(5)(a); RCW 48.31B.015.

16 Moreover, the Medical Association motion, which belatedly alleges that the woes of the
17 health care delivery system are the result of purported insurance industry practices, is directly
18 inconsistent with the Medical Association's own research and publications. *See* Washington State
19 Medical-Education and Research Foundation, *Washington's Ailing Health Care System:
20 Continued Decline, Guarded Prognosis* (2002), available at
http://www.wsma.org/01_whitepaper.pdf. That Medical Association-sponsored study makes no
21 mention of the litany of complaints now described in Medical Association' pleadings. In fact, a
22 recent Medical Association newsletter regarding conversion reports that "many physicians praise
23 Premera for responding well on a day-to-day operational basis." *WSMA Reports*
24 (November/December, 2002).

25 ¹² Petitioners' concerns about government-funded programs such as Healthy Options and the
Basic Health Plan do not give rise to standing to intervene under the Holding Company Acts. *See*,
Adv. Grps. Pet. Sup. at 4. Moreover, the decision to carry or drop any government-funded
program is not based on a carrier's status as non-profit or for-profit, but on whether a program is
financially viable. For example, Premera stopped selling Medicare + Choice because federal
funding was inadequate to cover all costs, and the fees were not acceptable to physicians and
hospitals. Spokane Tr. at 17. Petitioners themselves acknowledge that non-profit insurers like
Regence Blue Shield have discontinued participation in the Healthy Options program in many
parts of the state. Grps. Pet. Sup. at 4.

1 whether the reorganization is “fair and equitable to the policyholders, health care
2 providers, and the public.” OIC RFP at 7.

3 • Valuation Of Premera’s Assets. The OIC has expressed its
4 intent to value Premera’s assets.¹³ The OIC has engaged nationally recognized
5 investment bankers and financial advisors with extensive experience in the health care
6 industry and conversion transactions. Intervenor’s have nothing substantive to
7 contribute to the complex valuation of Premera’s assets.¹⁴

8 • Financial Aspects Of Reorganization. The OIC does not need
9 assistance from intervenors to conduct a comprehensive financial examination.¹⁵ The
10 OIC is already conducting, at Premera’s expense, a multi-million dollar examination of
11 Premera’s operations and finances, its plans to create the Charitable Organizations, and
12 other relevant financial information. Even outside the Holding Company Act
13 proceedings, the OIC has the authority to and regularly does conduct investigations
14 into the finances of the health carriers it regulates.¹⁶ As the Medical Association
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19 ¹³ Premera intends to dedicate 100 per cent of the initial stock of the new publicly traded for-
20 profit corporation for the benefit of health initiatives. Premera, therefore, does not believe asset
21 valuation is required. Whether a valuation is necessary is not at issue in this Opposition brief, and
therefore is not addressed further at this time. Premera reserves the right to raise this issue in the
future.

22 ¹⁴ Cf. Health Cntr. Ass’n Pet. at 4; Hosp. Ass’n Pet. at 6; Adv. Grps. Pet. at 12-13;
23 University of Alaska Application for Intervention (“UA Pet.”) at 3; United Way et al. Motion to
Intervene (“Alaska Pet.”) at 4.

24 ¹⁵ Cf. petitions cited in note 14, *supra*.

25 ¹⁶ The Holding Company Acts permit the OIC to require production of a health care carrier’s
books and records “as are reasonably necessary to ascertain the financial condition of the health

1 concedes: “The OIC and the Attorney General’s Office are eminently qualified to
2 assess the financial and legal dimensions of the proposal.”¹⁷

3 • Impact On Competition. The Attorney General or the OIC must
4 review whether there is “substantial evidence that the effect of the acquisition may
5 substantially lessen competition or tend to create a monopoly in the health coverage
6 business.” RCW 48.31C.030(5)(a)(ii). The AGO’s role in part is “to review possible
7 antitrust issues and anticompetitive effects of the proposed conversion.” AGO
8 Memorandum at 3. The lawyers in the antitrust section of the AGO, assisted by Dr.
9 Leffler, are currently working with the OIC Staff to develop a position on any antitrust
10 issues to present to the Commissioner in the Adjudicative Hearing. *Id.* If the AGO or
11 the OIC want input from Petitioners on competitive issues, they may subpoena
12 information from them, interview their representatives, or call them as witnesses in the
13 Adjudicative Hearing.¹⁸

16 • Impact On Subscribers. The OIC is engaged in a comprehensive
17 investigation to confirm that the reorganization will not adversely impact subscribers,
18 and the OIC is statutorily charged with determining whether the proposed
19 reorganization is unfair or unreasonable to subscribers. RCW 48.31C.030. According
20 to the National Association of Insurance Commissioners (“NAIC”), regulators under
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23 carrier or to determine compliance with this title.” RCW 48.31C.070; RCW 48.31B.035. The
24 Holding Company Acts also afford broad regulatory review of a carrier’s securities and corporate
25 procedures. *See, e.g.,* RCW 48.31B.045, 48.31C.080.

¹⁷ Med. Ass’n Pet. at 10.

¹⁸ *Cf.* Med. Ass’n Pet. at 12.

1 the Holding Company Act protect the interests of policyholders. Petitioners do not
2 need to protect subscribers;¹⁹ rather, the OIC “retain[s] authority to adequately protect
3 the policyholders of the insurer being acquired.” 1983-1 NAIC Proc. 94, 98.
4 Moreover, the experts retained to advise the Commissioner are charged with
5 determining “whether the proposed conversion is fair and equitable to policyholders,
6 health care providers, and the public.” OIC RFP at 7.

8 • Uses of Assets Dedicated to Support Charitable Purposes As a
9 Result of Premera Reorganization. The Advocacy Groups assert that they and their
10 constituents are “beneficiaries or at least potential beneficiaries of the nonprofit assets
11 that are currently held by nonprofit Premera” based on a “vested interest” claim in such
12 assets.²⁰ They argue that the Advocacy Groups therefore have a “significant interest”
13 based on such “beneficiary” status.²¹
14

15 In this respect, the Advocacy Groups and the other Petitioners are situated no
16 differently than any other advocacy or charity group, or for that matter, any individual
17 Washington citizens, who could similarly claim they are potential beneficiaries of
18 grants from funds Premera proposes to dedicate to charitable purposes as a result of the
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20 ¹⁹ Cf. Med. Ass’n Pet. at 11, 12; Health Cntr. Ass’n Pet. at 4.

21 ²⁰ See Declaration of Eleanor Hamburger at 2-6; Adv. Grps. Supplemental Memorandum in
22 Support of Motion to Intervene (“Adv. Grps. Sup.”) at 3, 5-6.

23 ²¹ The Advocacy Groups rely on the *cy pres* doctrine for these assertions. See Adv. Grps.
24 Sup. at 6. The *cy pres* doctrine is not at issue at this time. Premera and its predecessors were not
25 established or operated as charitable institutions and Premera has no obligation to distribute its
assets for charitable purposes. In any case, the Advocacy Groups themselves concede that
“Premera has indicated its agreement to transfer its nonprofit assets to nonprofit health

1 conversion. In fact, numerous other advocacy and charity groups have testified at the
2 public meetings that they too have an interest in and would like to benefit from the
3 funds managed by the Charitable Organizations.²²

4 Nor does the Advocacy Groups' claim of special expertise in conversion
5 transactions support standing as an intervenor in the Adjudicative Hearing. The
6 Attorney General has oversight over the distribution of charitable assets held by a
7 nonprofit corporation, and also has common-law authority to bring an action on a
8 charitable trust to protect the interests of the public. RCW 24.03.230; RCW
9 11.110.100 - 130; *Kenney Presbyterian Home v. State*, 174 Wn. 19, 40, 24 P.2d 403
10 (1933) ("A charitable trust is of public concern and the attorney-general is the protector
11 of the interests of the public . . .")
12

13 In any event, Premera's full value, as represented by 100 per cent of the initial
14 stock of the publicly traded company, will be dedicated to charitable purposes. The
15 proceeds from sale of that stock will be transferred to the Charitable Organizations to be
16 used "solely to promote the health of the residents of the states of Washington and
17 Alaska." Form A Statement, Ex. G-3 at 2; Ex. G-5 at 2.²³
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19
20 foundations in Washington and Alaska." *Id.* at 5. See also Premera Form A Filing, Exhibits G-3
and G-5.

21 ²² The question of whether potential beneficiaries are to be afforded full party status in a
22 conversion proceeding was not before the court in *Hawes c. Colorado Division of Insurance*, 32 P.
3d 571, 573-74 (Colo. Ct. App. 2001).

23 ²³ Premera does not concede, for the purposes of this Opposition or otherwise, that any of its
24 assets are in fact subject to charitable trust principles. Premera has no obligation to distribute its
25 assets for charitable purposes merely because it is a non-profit corporation. The assets of a non-
profit corporation not subject to other limitations may be distributed as the organization chooses.
RCW 24.03.225.

1 The fact that the Advocacy Groups may have a mission to promote health care also
2 does not result in a “significant interest” for purposes of intervention. The Charitable
3 Organizations are designed to be grant-makers. The Advocacy Groups may apply at the
4 appropriate time to receive grants from the Charitable Organizations like other potential
5 recipients. In the Wisconsin conversion proceeding, the commissioner denied
6 intervention status to similar advocacy groups with health care missions, noting that to the
7 extent “their missions relate to the health needs of sectors of the public, they may wish to
8 obtain grants from funds made available through the results of this proceeding.”²⁴ The
9 Advocacy Groups’ claim does not give rise to a “significant interest” justifying
10 intervention in the Adjudicative Hearing.
11

12 • Hypothetical Future Sale of Premera. Several Petitioners expressed
13 concern about a possible future sale of Premera.²⁵ Premera’s Chief Executive Officer has
14 publicly stated that there are no plans to sell the company. Spokane Tr. at 16. Even if
15 there were to be a change of control of Premera in the future, the Commissioner would be
16 required to scrutinize the transaction at that time under the Holding Company Acts. The
17 Commissioner’s authority to review any future transaction would be the same authority he
18 brings today to review the proposed reorganization. It must be presumed that the
19 Commissioner would, in such an eventuality, fully exercise his responsibilities with the
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24 ²⁴ *Wisconsin Order* at 4.

25 ²⁵ *See Adv. Grps. Pet. at 12; Hosp. Ass’n Pet. at 5-6; Med. Ass’n Pet. at 12.*

1 same diligence he is conducting the current proceedings. The fact that Petitioners fear a
2 future sale, therefore, does not constitute a “significant” interest.²⁶

3 • Protection Of Interests Of Alaska Citizens. The Alaska Petitioners'
4 assertion that their interests will not be protected in the Adjudicative Hearing is
5 unfounded.²⁷ The interests of the Alaska Petitioners are fully protected in this proceeding
6 not only by the Commissioner, but also by the Alaska Director, his staff at the Alaska
7 Division of Insurance, and the experts who have been retained to assure that the
8 reorganization is in the public interest of Alaska citizens. The Form A Statement
9 explicitly recognizes the role of Alaska regulatory review. Form A Statement, Ex. A-6.
10

11 Nationally recognized experts have been retained for the specific purpose of
12 guarding the interests of Alaska and its citizens. For example, Peterson Consulting is
13 specifically charged with determining whether the proposed reorganization is “fair and
14 equitable” to Alaska policyholders, “fair and reasonable to Alaska,” and “economically
15 viable from an Alaska perspective.” *See* Personal Services Contract Between State of
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18 ²⁶ In a recent Kansas case, the appeals court reversed the insurance commissioner’s
19 disapproval of a conversion plan because it was based in part on possible future rate increases and
20 surplus distributions. *Blue Cross & Blue Shield of Kan., Inc. v. Sebulius*, Nos. 02-C-340 and 02-
21 C-341 (Dist. Ct. of Shawnee County, Kan., June 7, 2002), *available at*
22 <http://www.shawneecourt.org/decisions/bcbs-anthem-sebelius.htm>. The court explained that
23 “before the future predicted ‘hazardous or prejudicial’ and/or ‘unfair and unreasonable’ rate hikes
24 and surplus reductions could occur, each would first have to be approved and authorized by the
25 Commissioner herself.” *Id.* at 11. The Court was “unwilling to presume, as a matter of law, that
this or any subsequent Commissioner would approve ‘hazardous or prejudicial’ and/or ‘unfair and
unreasonable’ rates or dividend distributions.” *Id.* The court concluded that because future
oversight was statutorily required, “it is not possible for” the Commissioner’s “‘projections’ to
ever be realized and it is therefore illogical, if not arbitrary and capricious, for the Commissioner
to base her denial solely on these ‘projections.’” *Id.*

²⁷ *See* Alaska Pet. at 2; UA Pet. at 2-3.

1 Washington Office of Insurance Commissioner and Peterson Consulting, Contract #03-21
2 at 39 (Nov. 19, 2002).

3 The structure of the Alaska Charitable Organization and the appropriate allocation
4 of funds between the Washington and Alaska Charitable Organizations is under review by
5 Alaska and its experts. The Alaska Director has stated that any Alaska “trust” must
6 encompass “the issue of access and affordability of healthcare for Alaskans, with
7 particular reference to uninsured Alaskans.” Alaska Hearing Transcript at 16 (Oct. 29,
8 2002). Actuaries have been specifically retained to opine as to “whether the proposed
9 transfer to charitable entities is fair and reasonable to Alaska and represents the full fair
10 market value of Premera to the people of Alaska.” OIC RFP at 14.
11

12 In summary, the Commissioner, the OIC Staff, the Attorney General, the
13 Alaska Director, and the Alaska Division of Insurance – along with their experts and
14 advisers – are already addressing all the relevant public concerns raised by Petitioners.
15 There is nothing to be gained, and potentially much to be lost in terms of cost and
16 efficiency, from granting party status to dozens of would-be intervenors who have no
17 special standing to participate on behalf of public interests in the Adjudicative Hearing.
18

19 **(b) The Commissioner, The OIC, And The Attorney General**
20 **Protect The Interests Of The Public.**

21 Petitioners do not need to intervene to protect the public interest because the
22 Commissioner, the OIC, and the Attorney General bear this responsibility. The Holding
23 Company Acts confer broad authority on the Commissioner to review and require relevant
24 information, to investigate the proposed transaction, and to retain attorneys, actuaries,
25

1 accountants and other experts to assist in its review. RCW 48.31C.030(5)(b); RCW
2 48.31B.015(4)(c). In addition, the Commissioner has authority to enforce the insurance
3 code. RCW 48.02.060(2). The Commissioner may conduct investigations, examinations,
4 and hearings “useful and proper for the efficient administration of any provision of this
5 code.” RCW 48.02.060(3).

6
7 In executing his duties, the Commissioner is charged with protection of the public
8 interest. RCW 48.01.030. “It is clear that the various statutory responsibilities of the
9 Insurance Commissioner are primarily intended to benefit the public.” *Marquardt v.*
10 *Federal Old Line Ins. Co.*, 33 Wn. App. 685, 691, 658 P.2d 20, 23 (1983).²⁸ Likewise, the
11 Attorney General – who will also participate in the review of Premera’s reorganization –
12 is obligated to act in support of the public’s concerns. *Washington v. Gattavara*, 182 Wn.
13 325, 329, 47 P.2d 18, 19 (1935).²⁹

14
15 In the present case, the Commissioner, the OIC Staff, and the Attorney General are
16 vigorously carrying out their statutory obligations to protect policyholders and the public.
17 In addition to their own expertise, they have engaged consultants with expertise in
18

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20 ²⁸ See also, *Herrmann v. Cissna*, 82 Wn.2d 1, 6, 507 P.2d 144, 147 (1973) (“Actions taken
21 by the commissioner in the discharge of his statutory responsibilities, while they undoubtedly
22 benefit some private parties, are taken primarily in the public interest.”); *Spokane County v.*
Washington, 136 Wn.2d 644, 649-50, 966 P.2d 305, 308 (1998) (public administrative agency
held to adequately represent the interests of union members).

23 ²⁹ See also *Reiter v. Wallgren*, 28 Wn.2d 872, 880, 184 P.2d 571, 575 (1947) (stating that it
24 is the Attorney General’s “paramount duty to protect the interests of the people of the state”); *King*
County v. Seattle Sch. Dist., No. 1, 278 F. 46, 48 (9th Cir. 1922), (“[T]he function of the Attorney
25 General is to represent the public, the entire community, and not a limited portion thereof.”),
overruled on other grounds, King County v. Seattle Sch. Dist. No. 1, 263 U.S. 361, 44 S.Ct. 127
(1923).

1 conversion transactions across the country. Nevertheless, the Medical Association claims
2 that it possesses special expertise that the OIC Staff and its team of experts lack.³⁰ In
3 addition, the Medical Association asserts some unique ability to ferret out important
4 information from Premera: “The questions cannot be posed by anyone [else].”³¹

5
6 In spite of the Medical Association’s brash assessment, the OIC and its team of
7 preeminent experts are fully competent to gather information from Premera and to address
8 the “complex web of law and industry practice” in which the Medical Association claims
9 special expertise. The consulting firms the OIC has retained are large, national firms with
10 experts in every aspect of health care. The Medical Association’s claim to superior
11 expertise and its ability to ask important questions is not a “significant” interest because
12 OIC staff and its consultants already have the relevant expertise and knowledge to
13 evaluate any health care impacts of the reorganization. The Medical Association’s claim
14 does not justify intervention in the Adjudicative Hearing.
15

16 Even if the Medical Association were to have some unique expertise, the mere fact
17 that a group seeking intervenor status may offer insight is not enough to justify
18 intervention. If the special knowledge of their members is needed, the OIC Staff is
19 empowered to subpoena or request information from the Medical Association. RCW
20 48.03.070. If appropriate, the OIC can call representatives of the Medical Association to
21 testify at the Adjudicative Hearing.
22

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24 ³⁰ Medical Association Supplemental Filing (“Med. Ass’n Sup.”) at 6-7.

25 ³¹ *Id.* at 7.

1 The Consumer Groups also claim “special expertise” in conversions.³² Even if the
2 Medical Association or the Advocacy Groups did possess special expertise in the health
3 care industry, this expertise would not constitute a “significant” interest or justify
4 intervention. At the hearing in the Wisconsin conversion case at which the commissioner
5 denied intervention to physicians, medical schools, and consumer groups, the
6 commissioner noted that “access to information and expertise are not the standard for
7 granting standing to parties in an administrative hearing.” *In the Matter of Application for*
8 *Conversion of Blue Cross & Blue Shield United of Wisconsin*, Case No. 99-C26038, at 5-6
9 (Wis. Comm’r Ins. Nov. 29, 1999) (transcript of administrative hearing), *available at*
10 <http://oci.wi.gov/bcbsconv/ah112999.pdf>.
11

12 The OIC and the AGO, supported by their health care experts – not the Medical
13 Association, the Advocacy Groups, or any private individual or organization – have the
14 expertise and authority to protect the public in the complex world of health care. Thus, as
15 the WUTC has recognized, a motion to intervene should be denied where the petitioners’
16 “interest as members of the public . . . is represented by Commission Staff and [the
17 Attorney General].” *In re U S WEST Communications, Inc.*, 1997 Wash. UTC Lexis 26,
18 at *5. The Commissioner, the OIC, and the Attorney General will protect the public in the
19 Adjudicative Hearing.
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25 ³² Adv. Grps. Sup. at 3.

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The Adjudicative Hearing is a targeted inquiry, not a forum for general discussion of special issues of concern to one group or another. The Holding Company Acts explicitly specify the issues for review, including (i) the carrier’s ability to satisfy license or registration requirements; (ii) anticompetitive effects of the transaction; (iii) the availability of health care coverage; (iv) certain public benefits of the transaction; (v) the financial condition of any acquiring party; (vi) the competence, experience, and integrity of the persons who would control the operation of the health carrier; and (vii) whether the acquisition is likely to be hazardous or prejudicial to the insurance buying public. RCW 48.31C.030(5)(a)(ii)(B)-(C); RCW 48.31B.015(4)(a)(i)–(vi).³³

33 Under the Health Carrier Act, the Commissioner is required to approve a transaction unless he finds that (i) the carrier would be unable to satisfy license or registration requirements after the transaction; or (ii) the effect of the transaction may substantially lessen competition or tend to create a monopoly. RCW 48.31C.030(5)(a)(i)-(ii). The Commissioner may not disapprove a transaction if he finds that (i) it will yield substantial economies of scale or in resource use, and the public benefits from the economies would exceed the public benefits of more competition, or (ii) the acquisition will substantially increase or prevent significant deterioration in

1 In narrowly defining the scope of review, the legislature followed the drafters of
2 the Model Holding Company Act. When it approved the Model Act in 1969, the NAIC
3 noted that the insurance regulator is to be guided by the specific statutory criteria in
4 protecting the public interest:

5 The Insurance Commissioner is given authority under the Act to
6 disapprove any attempted acquisition of or change in control over an
7 insurer if the "takeover" party could not satisfy specific standards designed
to protect the interest of policyholders, shareholders and the public.

8 1969-1 NAIC Proc. 171, 185 (emphasis added). Similarly, the legislative history for the
9 Health Carrier Act provides, "[t]he commissioner must approve or deny the acquisition
10 based on prescribed standards and procedures." Final Bill Report SHB 1792 (2001)
11 (emphasis added).
12

13 Petitioners' concerns about issues other than these "prescribed standards" do not
14 help their cause, particularly when they are motivated by their own self-interests.

15 • Hospital Associations' Claim On Premera's Assets. The Hospital
16 Associations' purported "special claim" on the assets Premera intends to transfer to the
17 Charitable Organizations represents a blatantly special interest, irrelevant to the OIC
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19 the availability of health care coverage, and the public benefits of the increase exceed the benefits
20 of more competition. RCW 48.31C.030(5)(a)(ii)(B)(I)-(II). The Commissioner may condition his
21 approval of the transaction on the removal of the basis of disapproval if: (i) the financial condition
22 of an acquiring party might jeopardize the financial stability of the health carrier or prejudice the
23 interest of its subscribers; (ii) the plans of the acquiring party to liquidate the health carrier, sell its
24 assets, consolidate or merge it, or make any other material change in the business or corporate
25 structure or management are unfair and unreasonable to subscribers and not in the public interest;
(iii) the competence, experience, and integrity of the persons who would control the operation of
the health carrier are such that it would not be in the interest of subscribers or the public; (iv) the
acquisition is likely to be hazardous or prejudicial to the insurance buying public. RCW
48.31C.030(5)(a)(ii)(C). Under the Insurer Act, the Commissioner must approve a transaction
under similar criteria. RCW 48.31B.015(4)(a)(i)-(vi). The requirements under the Alaska

1 review, unique to certain of their members, and definitely outside the scope of permissible
2 Holding Company Acts review.³⁴ The courts, not the Commissioner, should hear any
3 such claim by the Hospital Associations.³⁵ The Hospital Associations seek to put a cloud
4 on Premera's assets by inserting their unsupported claim into their motion to intervene.
5 Significantly, they have failed to request adjudication of that claim in any court of
6 competent jurisdiction.
7

8 The Hospital Associations' claim has no merit. Prior to 1984, certain hospitals
9 were voting corporate members of Premera's predecessor, Blue Cross of Washington and
10 Alaska ("BCWA"). In that year, BCWA's hospital members voted to relinquish their
11 status as members of the corporation. The record reflects that WSHA and the hospitals
12 were fully apprised about the effect of that decision. More specifically, they were advised
13 that in the future the Board of Directors would have authority to modify the Bylaws,
14 which govern disposition of company assets. The record further reflects that the change in
15 voting rights and related changes in the relationship between BCWA and the hospitals
16 were made with the full knowledge and approval of the hospitals and WSHA, if not at the
17 urging of WSHA. The records also reflect that WSHA, which was represented by
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20 Insurance Holding Company Act are the same as the Washington Insurer Act in material respects.
AS 21.22.030.

21 ³⁴ See Hosp. Ass'n Pet. at 4-5.

22 ³⁵ An agency may conduct an adjudicative proceeding only with respect to a matter within
its jurisdiction and within the scope of its authority. RCW 34.05.413(1); *see also* RCW
23 34.05.570(3)(b) (reviewing court to grant relief from agency order if the order is outside the
agency's statutory authority or jurisdiction). Administrative agencies are creatures of the
24 Legislature, without inherent or common-law powers and, as such, may exercise only those
powers conferred by statute. *Human Rights Comm'n v. Cheney Sch. Dist.* 30, 97 Wn. 2d 118, 125,
25

1 independent outside counsel, was an active and informed participant in the decision-
2 making process.³⁶ Premera advised WSHA and its counsel of these facts and provided
3 supporting documentation.

4 In short, the Hospital Associations' claim has no merit, it does not give rise to any
5 "significant" interest, and it should not be considered as part of the Holding Company
6 Acts review.

7
8 • Maintaining Provider Reimbursement Levels. The Medical
9 Association and its members have been unabashed about their concern regarding the level
10 of Premera's physician reimbursements.³⁷ The Hospital Associations similarly express
11 concern about "the possibility of serious monetary losses in the form of reduced
12 payments."³⁸
13

14 641 P.2d 163 (1982) (commission had no authority to award damage remedy.); *Kaiser Aluminum*
15 *& Chem. Corp. v. Dept. of Labor & Indus.*, 121 Wn.2d 776, 780, 854 P.2d 611 (1993).

16 ³⁶ In addition, WSHA's claim to Premera's assets is wholly contrary to Washington law.
17 The Washington Supreme Court has unequivocally held that rights created by corporate charter
18 documents are "extinguishable through the amendatory process, according to the terms of the
contract between the corporation and its [members]." *Seattle Trust & Sav. Bank v. McCarthy*, 94
Wn.2d 605, 611, 612, 617 P.2d 1023 (1980) (minority shareholder preemptive right to acquire
unissued stock could be eliminated by majority vote to amend articles and eliminate the right).

19 ³⁷ Med. Ass'n Sup. at 7. A Medical Association representative spoke at the Spokane
20 meeting, stating: "Our members feel that [the reorganization] would be negative and that we
21 would receive reduced fees for services." Spokane Transcript, p. 30:22-24 (Oct. 2, 2002). Another
22 representative of a physicians' organization stated: "Our members are concerned that it will not
23 be possible for [Premera] to maintain the current fee schedule when financial obligations to
shareholders exist." Spokane Transcript, p. 33:11-14. Another representative of a physicians
group expressed concern about "the likelihood of the feasibly [sic] declining fees." Spokane
Transcript, p. 36:15-16. Other physicians feared "reduced fees for their services." Richland
Transcript at 39:19 (Oct. 8, 2002).

24 ³⁸ Hosp. Ass'n Sup. at 10. At the Seattle public meeting, the president of AWPHD
25 expressed concern about "the potential for the decreasing ability for hospitals to negotiate
contracts for care." Seattle Transcript at 40: 11-12 (Sept. 30, 2002). One member of the Hospital
Associations admitted his fear that Premera would be "cutting rates to the providers" or become

1 It is not in the public interest to permit the Medical Association and the Hospital
2 Associations to intervene to advocate reimbursement rates for their members.³⁹ The level
3 of Premera's payments to providers is directly tied to rates paid by Premera's
4 policyholders. The higher the level of the reimbursement rates to providers, the higher the
5 premiums for Premera's subscribers.
6

7 The providers' attempt to justify their concern for provider reimbursement by
8 tying Premera's reorganization to problems in the health care system, such as the
9 economic plight of rural hospitals and the economic viability of medical practices in
10 Washington.⁴⁰ In fact, if rural hospitals in Washington are in a fiscal crisis, it is due to a
11 variety of reasons, including their older, less healthy clientele and other factors that have
12 nothing to do with Premera's reorganization.⁴¹ Similarly, according to the Medical
13 Association's own research, the decline in medical practices in Washington is caused by
14 factors unrelated to Premera's reorganization, such as inadequate funding of publicly
15 sponsored health care programs, the medical malpractice crisis, and reduced Medicaid and
16 Medicare rates.⁴²
17

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19 "more difficult to negotiate with." Spokane Transcript at 44: 22-23. The president of WSHA
20 bluntly stated: "[M]any of our urban members are worried Premera will cut its payments to
21 them." Seattle Transcript at 68:10-12.

22 ³⁹ Premera has stated that it does not expect the reorganization to for-profit status to affect
23 provider fees. Spokane Tr. at 15:23-24.

24 ⁴⁰ Med. Ass'n Pet. at 5; Hospital Associations Supplemental Filing ("Hosp. Ass'n Sup.") at
25 10.

26 ⁴¹ See, e.g., Paul Freeman, *Gaps Widen in Rural Health Care Despite Initiatives*, PUGET
27 SOUND BUSINESS JOURNAL, Nov. 1, 2002, available at
28 <http://seattle.bizjournals.com/seattle/stories/2002/11/04/focus1.html>.

29 ⁴² See Washington State Medical-Education and Research Foundation, *Washington's Ailing
30 Health Care System: Continued Decline, Guarded Prognosis* (2002).

1 Notwithstanding all their protestations about the woes facing health care, the
2 provider associations are fundamentally seeking to safeguard their members'
3 reimbursement levels. This is not a "significant" interest warranting intervention in a
4 Holding Company Act proceeding, in particular where higher reimbursement levels can
5 lead to increased premiums for the insurance-buying public.
6

7 • Providers' Desire To Obtain Premera's Proprietary, Confidential
8 Information. Neither the Hospital Associations nor the Medical Association hide the fact
9 that they want to intervene to obtain access to Premera's confidential, proprietary financial
10 information.⁴³ Such information includes cost data that is directly tied to reimbursement
11 rates. The Hospital Associations blatantly argue that they should have access to "the
12 proprietary information that would allow them to analyze the extent to which the proposed
13 transaction would affect their members"; the Hospital Associations want information
14 pertaining in part to "potential decreases in hospital payments."⁴⁴ The attorney for the
15 Medical Association similarly noted in the organization's monthly publication that
16 intervention would permit access to Premera's "internal" documents. *WSMA Reports* at 1
17 (Nov./Dec. 2002).
18

19 As the Hospital Associations and Medical Association assert, their organizations
20 include a great number of providers that contract with Premera to serve Premera's
21 policyholders. If the Medical Association and the Hospital Associations were to disclose
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24 ⁴³ See Hosp. Ass'n Sup. at 7-8; Med. Ass'n Sup. at 7-8.

25 ⁴⁴ Hosp. Ass'n Sup. at 8-9.

1 Premera's confidential financial information to their members, the result could be
2 increased premiums to Premera's policyholders. Petitioners in the present case should not
3 be afforded party status in order to gain access to confidential information, the disclosure
4 of which could ultimately harm Premera's policyholders and the insurance-buying public.
5 Such a motive does not constitute a "significant" interest justifying intervention.
6

7 Moreover, the providers' interest in obtaining Premera's confidential data on
8 reimbursement rates raises serious antitrust concerns. The members of the Hospital
9 Associations and the Medical Association are direct competitors in the market place.
10 Disclosure of Premera's confidential reimbursement data to the providers could result in
11 collusion and the danger of artificially high reimbursement rates, leading to higher
12 premiums.⁴⁵ The Commissioner and the Attorney General, who are charged with
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15 ⁴⁵ The Department of Justice and the Federal Trade Commission have, in the past, frowned
upon efforts to widely distribute among competitors information related to pricing:

16 Dissemination of the *average* prices charged for particular procedures can be
17 more troublesome from an antitrust standpoint [than dissemination of a range of
18 charges]. A danger in the dissemination of average price information to
19 physicians who currently charge varying prices and may provide services of
20 varying levels of quality can be that the stated average may, through tacit or
express agreement, serve as a focal point for artificial price conformity. For
21 example, price dissemination of an average price may be part of competitors'
22 reaching a common understanding that the stated average will become the price
23 they usually will charge, or even the minimum price charged, for a particular
24 product or service.

21 FTC Staff Advisory Opinion to Utah Society of Oral and Maxillofacial Surgeons from Arthur N.
22 Lerner, Assistant Director (Feb. 8, 1985) (emphasis added); *see also* FTC Staff Advisory Opinion
23 to American Dental Association, from Timothy J. Muris, Director (August 26, 1985) (noting that
anticompetitive effects from the proposed survey were less likely because, among other things, the
data would indicate a range of fees rather than results regarding a single price.)

24 In this case, distribution of the sensitive information sought would be far more damaging
25 to competition than "average pricing." There is nothing "average" about Premera's confidential
financial information: this data shows Premera's current and projected actual cost data.

1 protecting the interests of policyholders and reviewing antitrust issues in connection with
2 the Premera reorganization, should closely scrutinize the provider associations' efforts to
3 obtain Premera's confidential information.⁴⁶

4 • Subsidies For Academic Medical Training And Indigent Care.

5 Petitioners claim that funding for academic medical education is insufficient, and they
6 argue that they are burdened with unreimbursed costs of charity care.⁴⁷ For example, the
7 University of Washington expressly claims that Premera's contract rates should support
8 the costs of medical education and care for the indigent.⁴⁸ The burden of these funding
9 deficiencies cannot be shifted to Premera's policyholders.
10

11 The Commissioner has the statutory duty to insure that the rates paid by Premera's
12 policyholders are reasonable, not designed to subsidize funding for indigent treatment or
13 medical education. Premera's policyholders, who want low-cost medical insurance, will
14 surely disagree that such subsidies are in their best interests or the interests of justice. At
15 the Spokane public meeting, for example, a representative of one of Washington's largest
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21 ⁴⁶ Members of the Medical Association have recently been charged with price fixing in a
22 consumer antitrust suit pending in federal court. *See Hinman v. Yakima Surgical Associates et al.*
23 (U.S.D.C. No. 02-3119-FVS). The plaintiffs, who are consumer patients, charge that the
physicians unlawfully conspired to refuse to deal with health maintenance and preferred provider
organizations.

24 ⁴⁷ *See, e.g.,* UW Pet. at 2-4; Hosp. Ass'n Sup. at 4; Adv. Grps. Pet. at 12; Health Cntrs. Pet.
at 3; UA Pet. at 2-3.

25 ⁴⁸ UW Pet. at 3-5.

1 consumer organizations – a group that provides health insurance for over 24,000 people
2 across the state through Premera – spoke in favor of the Premera reorganization.⁴⁹

3 Petitioners’ commitment to medical education and indigent care is laudable.
4 However, it is not a “significant” interest warranting intervention under the Holding
5 Company Acts.
6

7 **(d) Petitioners Raise Inapplicable Provisions Of Law In Their**
8 **Attempt To Demonstrate “Significant Interest” Or Alternate**
9 **Bases For Intervention.**

10 In spite of the undisputed applicability of the APA and the substantive provisions
11 of the Holding Company Acts to intervention in a Holding Company Act proceeding,
12 Petitioners attempt to cobble together standards from inapplicable contexts.

13 • RCW 48.04.010. Petitioners mistakenly assert as grounds for
14 intervention that they are “aggrieved persons” under RCW 48.04.010.⁵⁰ The
15 Commissioner has committed no act or threatened act that has aggrieved Petitioners. Nor
16 has the Commissioner failed to act in any manner. Consistent with the Holding Company
17 Acts, the Commissioner announced that he will hold an Adjudicative Hearing on
18 Premera’s Form A Statement, after which he will issue a final order. The prerequisites for
19 a hearing under RCW 48.04.010 do not exist. RCW 48.04.010, therefore, is not
20 applicable. Petitioners’ assertion that any time they are “aggrieved” by the “possibility”
21 of an adverse decision, they are entitled to intervene in a Holding Company Act
22 proceeding, would reduce the “significant interest” test to a nullity.
23

24 ⁴⁹ Spokane Transcript at 26: 21-22 (Oct. 2, 2002).
25

1 • Kueckelhan v. Federal Old Line Insurance Co.. The Advocacy
2 Groups and the Hospital Associations cite *Kueckelhan v. Federal Old Line Insurance Co.*,
3 69 Wn. 2d 392, 418 P.2d 443 (1966), because it uses the term “significant interest.” The
4 use of the term “significant interest” in *Kueckelhan* has nothing to do with standing to
5 intervene. The case deals with the appointment of the Washington insurance
6 commissioner to supervise the rehabilitation of a mutual insurance company.⁵¹ The court
7 states that, in contrast to investments of private corporations, the public has a significant
8 interest in the investments of a mutual company. The case does not stand for the
9 proposition that every member of the public has standing to intervene in a Holding
10 Company Act proceeding. If the legislature had intended that every member of the public
11 could intervene in a Holding Company Act proceeding, the “significant interest” test
12 would not have been included as a requirement to intervene in the Adjudicative Hearing.
13
14

15 • Civil Rule 24. Petitioners also cite Civil Rule 24 as a basis for
16 intervention.⁵² Civil Rule 24 does not apply here. Civil Rule 24 is a procedural rule that
17 governs intervention in state court proceedings, not agency proceedings. The APA and
18 the Holding Company Acts govern intervention, not Civil Rule 24. The standard for
19

20 ⁵⁰ See Adv. Grps. Sup. at 9-10; Med. Ass’n Pet. at 8.

21 ⁵¹ A mutual insurance company, by definition, is owned by its policyholders. RCW
22 48.09.120. Premera is a health care service contractor, not a mutual insurance company.
23 Premera’s subscribers do not own Premera. In the Wisconsin case, parties seeking to intervene
24 similarly cited law applicable to mutual insurers. Denying the motions to intervene, the
25 commissioner stated: “[The statute] applies to a conversion that affects rights policyholders have
in a mutual insurer (voting, interest in equity etc.) Policyholders do not have any similar rights
with respect to a service insurance corporation.” *Wisconsin Order* at 3.

⁵² See UW Pet. at 7; Hosp. Ass’n Sup. at 7-8.

1 intervention under Civil Rule 24, which merely requires that a party have an “interest” in
2 a proceeding, is inconsistent with the Holding Company Acts. Petitioners cannot
3 substitute the Civil Rule 24 standard for the criteria prescribed by the Holding Company
4 Acts, which expressly require a “significant interest” for intervention.

5 • Standards For Judicial Review Of Agency Decision. The
6 Advocacy Groups further attempt to invoke the term “aggrieved” as it is used in the
7 standing rules for judicial review. The Advocacy Groups cannot meet the requirement to
8 show they are “aggrieved” at this point: the Commissioner has not issued a final order or
9 even conducted his Adjudicative Hearing. As the Advocacy Groups admit, the APA does
10 not use the term “aggrieved person” except in the context of judicial review. *See* RCW
11 34.05.530. The Advocacy Groups thus are forced to argue how RCW 34.05.530 “should”
12 be read instead of how it actually reads.⁵³

13
14
15 Petitioners also rely upon terms like “zone of interest” and “injury-in-fact,” which
16 apply to judicial review.⁵⁴ Those terms have nothing to do with standing to intervene in
17

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19 ⁵³ *See* Adv. Grps. Sup. at 10. Even if the standards for judicial review were somehow
20 relevant, Petitioners cannot establish that they fall within any relevant zone of interest or that they
21 have suffered any actual injury. Their concerns focus upon hypothetical future impacts of the
22 Premera reorganization. No petitioner can be said to suffer any “injury-in-fact” within the “zone
23 of interest” until the Adjudicative Hearing has been concluded and a final order issued. “An
24 interest which is contingent upon the occurrence of a train of subsequent events will not support
intervention.” *Silver v. Babbitt*, 166 F.R.D. 418, 427 (D.C. Ariz. 1994), *aff’d* 68 F.3d 481 (9th Cir.
1995). Claims that are “too speculative and too contingent on unknown factors” do not support
intervention. *Hill v. Western Electric Co., Inc.*, 672 F.2d 381, 393 (4th Cir. 1982), *citing Sutphen*
Estates v. United States, 342 U.S. 19, 23, 72 S. Ct. 14, 17 (1951); *see also Greene v. United*
States, 996 F.2d 973, 977 (9th Cir. 1993) (finding tribe's interest too speculative to warrant
intervention).

25 ⁵⁴ *See* Hosp. Ass’n Sup. at 9-10; Adv. Grps. Sup. at 10-12.

1 the Adjudicative Hearing. “Zone of interest” and “injury-in-fact” are standards when a
2 party seeks judicial review of a final agency order. Obviously, the petitioners seeking to
3 intervene in the Adjudicative Hearing are not petitioning for judicial review by the courts.
4 Judicial review takes place only after the agency has issued its final decision and after a
5 party has exhausted his administrative remedies, not before the agency has even had a
6 chance to conduct its Adjudicative Hearing. RCW 34.05.534. Petitioners’ arguments
7 regarding the zone of interest and injury-in-fact, therefore, are simply not relevant to their
8 efforts to intervene in the Adjudicative Hearing.
9

10 • Protection And Advocacy Acts. The Advocacy Groups also
11 contend that the federal “Protection and Advocacy Acts” entitles the Washington
12 Protection and Advocacy System (“WPAS”) to intervene in the Adjudicative Hearing.⁵⁵
13 Federal law does not give WPAS any more right to intervene in a state agency proceeding
14 than any other individual or group advocating for disabled persons.⁵⁶ The Protection and
15 Advocacy Acts simply authorize WPAS to “pursue administrative, legal and other
16 remedies.” 42 U.S.C. § 10805(a)(1)(B), (C). In exercising this authority, WPAS is
17 subject to the same rules as any other organization. For example, WPAS could not bring a
18 lawsuit in a court that lacked jurisdiction. Here, WPAS – like every other organization –
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23 ⁵⁵ See Adv. Grps. Sup. at 12.

24 ⁵⁶ Nor does WPAS support the intervention of Mr. Garner, the disabled Petitioner from
25 Alaska. Mr. Garner has no superior rights to intervene than any individual who requires medical
services.

1 must comply with the rules set forth in the APA and the Holding Company Acts in order
2 to intervene in the Adjudicative Hearing.

3 The federal statute does not give WPAS an independent right to intervene in a
4 state agency proceeding, nor does the federal statute preempt state law or supercede the
5 requirements of the APA. To the contrary, the Advocacy Groups must satisfy the same
6 standard for intervention as any other third party. *Cf. Ass'n For Disabled Americans, Inc.*
7 *v. Amoco Oil Co.*, --- F.R.D. ----, 2002 WL 31512705, at * 17 (S.D. Fla. Feb 19, 2002)
8 (organizations advocating for disabled lacked standing to object to class settlement
9 because they did not show any particular class member had been or would be subject to
10 discrimination, nor was there a showing of direct injury-in-fact to the organizations
11 themselves: a "claimed mandate to represent disabled persons does not obviate the need
12 to satisfy Article III's standing requirements").⁵⁷

13
14
15 In the Wisconsin conversion proceeding, the insurance commissioner considered
16 and rejected a motion to intervene by Wisconsin Coalition for Advocacy, a protection and
17 advocacy agency for the mentally ill and persons with other disabilities. The
18 commissioner concluded that the interest asserted by this organization was not of a type
19 recognized by statute, inasmuch as the commissioner was granted broad discretion to
20 make a decision that protected the public interest. No particular interest deserved special
21 weight in this process. *Wisconsin Order*, at 4-5. The same conclusion applies to WPAS.
22

23
24 ⁵⁷ See also *Tennessee Protection & Advocacy, Inc. v. Board of Ed. of Putnam County*, 24 F.
25 Supp. 2d 808, 816 (M.D. Tenn. 1998) (advocacy group failed to establish standing to sue because

1 • Standing As State Agency. The University of Washington argues
2 that since it is a state agency with statutory responsibilities, it should be allowed to
3 intervene.⁵⁸ If accepted, this argument would permit intervention by scores of other state
4 agencies with specific health-related responsibilities, including agencies responsible for
5 drug and alcohol treatment; hospital certification; licensure for all kinds of health care
6 providers such as physicians, nurses, naturopaths, chiropractors, and dentists; and a
7 myriad other such agencies. The OIC and the AGO, who are the agencies designated with
8 responsibility and authority under the Holding Company Acts, are already reviewing
9 Premera's proposed conversion. The fact that the University has statutory responsibility
10 for operating the medical school does not entitle the University to intervene.
11

12 **2. Intervention Will Impair The Orderly And Prompt Conduct Of The**
13 **Adjudicative Hearing.**

14 Granting Petitioners' motions to intervene in the Adjudicative Hearing would
15 invite chaos. The proceedings are already time consuming and complex even though
16 there are now only two parties, the OIC and Premera. Multiple regulatory agencies, seven
17 national consulting firms, and various other experts retained by the states are already
18 engaged in the review of Premera's Form A Statement. It appears that dozens of
19 individuals representing the respective consultants and experts are already at work.
20

21 The logistics of coordinating discovery and other pre-hearing matters are already
22 extraordinary. For example, on October 14, 2002, Premera representatives met with the
23

24 it neither alleged injury to specific individuals nor injury to itself as a group); *Doe v. Stincer*, 175
25 F.3d 879 (11th Cir. 1999) (same).

⁵⁸ UW Pet. at 8.

1 fifteen of the consultants for Washington and Alaska to discuss the proposed
2 reorganization. On November 6, 2002, the state consultants met with Premera to discuss
3 production of documents in response to their data requests. At the meeting, over 15
4 consultants attended, either in person or by teleconference. More than 20 consultants
5 participated in management interviews with Premera on November 26, 2002.
6

7 If dozens of additional groups succeed in becoming parties in the Adjudicative
8 Hearing, the complexity of the proceedings will become a nightmare. Delay, inefficiency,
9 and unwarranted costs will inevitably result. Granting intervention to more than 50
10 additional parties, each with its own agenda, is certain to open the floodgates to discovery
11 disputes, motions, argument on irrelevant issues, and other litigation woes. In her order
12 denying intervention to various groups, the Wisconsin insurance commissioner warned
13 that permitting intervention in the Holding Company Act proceeding would “open the
14 door to permit hundreds of persons appearing in an agency proceeding to cross examine
15 witnesses, to make opening statements, and to depose witnesses, would produce a chaotic,
16 unmanageable and interminable proceeding.” *Wisconsin Order*, at 5 (emphasis added).
17

18 • Discovery. As in Wisconsin, the danger of a “chaotic,
19 unmanageable and interminable proceeding” looms here. Discovery alone could be
20 unmanageable. Petitioners would almost assuredly seek to discover thousands of pages of
21 documents, take numerous depositions, and present hours of lay and expert testimony. All
22 50 parties – each representing dozens of constituents – would at a minimum want access
23 to the information already obtained by the OIC and the AGO, some of which is
24
25

1 confidential. Not content with access to existing discovery, the Medical Association seeks
2 even more, claiming that it “needs the ability” to compel Premera to respond to
3 interrogatories, to take depositions of senior Premera executives, and to examine and
4 cross-examine witnesses in the Adjudicative Hearing.⁵⁹

5
6 As discussed above, providers such as the members of the Medical Association
7 and the Hospital Associations should not have access to Premera’s confidential,
8 proprietary financial information relating to provider payments. Handling the logistics of
9 confidential documents is difficult under the best of circumstances. The difficulty would
10 be heightened if intervention were granted to consumer groups with hundreds of members
11 and to business groups with a financial incentive to obtain Premera’s confidential
12 information.

13
14 • Legal Motions And Argument. Any proceeding involving multiple
15 parties, each with its own lawyer, inevitably involves multiple legal disputes and myriad
16 motions. In this case, there are ten law firms or legal agencies representing the many
17 Petitioners seeking to intervene. If each of these Petitioners were allowed to intervene,
18 the Adjudicative Hearing would become bogged down with legal motions and briefs on
19 the scope of discovery, the issues to be heard, the evidence to be admitted, and other
20 litigation issues. Each motion would require notice and could entail a hearing conducted
21 by the Commissioner. The OIC Staff and Premera could be burdened with drafting in-
22 depth, lengthy briefs.

23
24
25 ⁵⁹ Med. Ass’n Sup. at 7.

1 Even scheduling would become onerous. The November 26, 2002, status
2 conference – with only two parties in the proceeding – proved to be a lengthy,
3 complicated hearing even on simple matters like scheduling. The resources of both
4 Premera and the OIC could be stretched to the point of exhaustion dealing with procedural
5 issues if multiple intervenors were allowed in as parties.
6

7 • Testimony And Cross-Examination. The formal Adjudicative
8 Hearing could stretch out indefinitely, burdened by lengthy testimony and cross-
9 examination of dozens of intervenors’ witnesses. As noted above, there are already
10 numerous expert consultants involved in the OIC’s examination. Although not all of these
11 consultants will file expert testimony, a significant number will appear as witnesses at the
12 Adjudicative Hearing on both Alaska and Washington issues. In addition, Premera will
13 present its own testimony and expert witnesses.
14

15 Lawyers for each of the parties seeking intervention are likely not only to present
16 their own witnesses, but also to insist on cross-examining the witnesses for the OIC Staff
17 and Premera. As a result, attorneys for Premera and the OIC may be compelled to
18 examine and cross-examine the intervenors’ witnesses. Since Intervenors’ interests do not
19 necessarily coincide, the intervenors’ attorneys may also want to cross-examine the
20 various experts and witnesses for other intervenors, thus even further enlarging the formal
21 Adjudicative Hearing.
22

23 • Obstructive Tactics. The Wisconsin Commissioner noted that
24 granting intervention status to multiple groups “would leave agency proceedings
25

1 ‘vulnerable to deliberate obstruction.’” *Wisconsin Order*, at 5. Indeed, in the present
2 case, the real motivation of some Petitioners may be intentionally to complicate and
3 obstruct the proceedings. Several Petitioners have made clear their opposition to the
4 Premera reorganization and their wish to delay its approval indefinitely.⁶⁰ Clearly, the
5 Adjudicative Hearing is vulnerable to the sort of “deliberate obstruction” about which the
6 Wisconsin commissioner warned.

8 Under the best of circumstances, the OIC’s focused consideration of the criteria set
9 forth in the Holding Company Acts could be overwhelmed by the Petitioners’ discovery,
10 argumentation, and testimony on matters of special interest to their members. As the
11 WUTC has recognized, motions to intervene must sometimes be denied to preserve the
12 “orderly and prompt conduct of the proceedings.” *WUTC v. U S WEST Communications,*
13 *Inc.*, No. UT-970766), 1997 WASH. UTC LEXIS 71, at *5 (1997) (denying petition to
14 intervene where issues were limited and intervention would impair the prompt and orderly
15 conduct of the proceeding).⁶¹

17 For all of these reasons, Premera urges the Commissioner to deny the motions to
18 intervene to prevent the “chaotic, unmanageable, and interminable process” about which
19 the Wisconsin commissioner warned.

21 ⁶⁰ See., e.g., Med. Ass’n Sup. at 1.

22 ⁶¹ In similar circumstances, courts have denied intervention. The “potential for their
23 participation as intervenors to delay this action and prejudice the public’s interest in an orderly and
24 expeditious resolution of this matter far outweighs any likely benefit to be derived from permitting
25 intervention.” *United States v. IBM* 1995-2 Trade Cases P 71, 135, 1995 WL 366383, *6
(S.D.N.Y. 1995). See also, *Envirocare of Utah, Inc. v. Nuclear Regulatory Comm’n*, 194 F.3d 72,

1 **3. Granting Intervention Will Not Further The Interests Of Justice.**

2 Petitioners fail to establish that intervention is “in the interests of justice.” RCW
3 34.05.443(1). Justice is poorly served by granting privileges only to a few self-appointed
4 groups who wish to pursue self-serving agendas. *See Washington Environmental Council*
5 *v. Whatcom County*, Nos. 97-22 & 23, 1998 WL 156705 (Wash. Shore. Hrg. Bd. March 4,
6 1998) (intervention denied to developer of competing project as not in the public interest).
7

8 The interests of justice are better served by allowing the Commissioner to do his
9 statutorily mandated job of protecting the public, free of interference by would-be
10 intervenors. The Commissioner and the OIC staff are uniquely equipped to review
11 Premera’s plan of reorganization, balance the interests of various groups, and determine
12 the public interest. Unlike the advocates for special interests, the Commissioner
13 represents all members of the public, including the tens of thousands of Washington
14 consumers who look to Premera for healthcare coverage.
15

16 The Commissioner and his staff are entrusted with the duty to balance competing
17 interests. In her order denying intervention, the Wisconsin commissioner stated:

18 The statute gives wide discretion to the Commissioner to protect the
19 ‘public interest.’ It [is] apparent that there are many, and varied, interests
20 that may compete for a particular outcome of this proceeding. No interest
21 was given a particular right to be weighed more heavily than any other
22 under the statute. Rather the statute contemplates that the Commissioner,
with the benefit of broad public discussion, should balance all the
competing interests and make a determination of whether the proposed
plan is not in the public interest.

23 *Wisconsin Order*, at 5.

24

25 78 (D.C. Cir. 1999) (court upheld denial of intervention on grounds of agency concern about
potential burdens on the adjudicatory process that could divert the agency’s limited resources).

1 The Wisconsin commissioner – like the Commissioner in the present proceeding –
2 provided ample opportunities for public participation in the process. Limiting the formal
3 Adjudicative Hearing, however, to the two existing parties – the OIC Staff and Premera –
4 will permit the Commissioner to review the relevant evidence in an orderly way, to
5 balance the competing interests of all members of the public, and to make his
6 determination based upon the public interest. Granting Petitioners’ motions to intervene
7 would frustrate, not promote, “the interests of justice.” RCW 34.05.443(1).
8

9 IV. CONCLUSION

10 Premera welcomes public debate on its application for reorganization and
11 appreciates the opportunities provided by the OIC for public comment. A number of
12 Petitioners have already testified in the public hearings, and all will have the future
13 opportunity to do so following public disclosure of the OIC’s expert reports. Petitioners
14 are free in the future to review the OIC’s expert reports, retain their own experts, conduct
15 their own investigations, and present their findings to the Commissioner in written
16 submissions or in testimony in the next round of public meetings.⁶²
17

18 Petitioners do not meet the tests for being granted intervention with party status in
19 the Adjudicative Hearing. Premera’s Form A Statement is complex, and the OIC’s
20 investigation and the Commissioner’s review under the Holding Company Acts is highly
21 technical and time-consuming. The Commissioner, the OIC Staff, and the Alaska
22

23 ⁶² If there is any question about the adequacy of the opportunities already created for public
24 input in this process, the Commissioner can permit non-parties (including the petitioners) to offer
25 comments at the conclusion of the Adjudicative Hearing. If the Commissioner is considering
granting limited intervenor status to Petitioners, Premera requests an opportunity formally to
address the issue of the proper scope of Petitioners’ participation as parties.

1 Director have available the expertise of experienced consultants and advisers. Petitioners
2 should not be permitted to exhaust the Commissioner's administrative resources or
3 threaten the orderly conduct of the Adjudicative Hearing by engaging in discovery, filing
4 motions, and presenting evidence and cross-examination. For these reasons, Premera
5 urges the Commissioner to deny the Petitioners' motions to intervene.

6 DATED this 11th day of December, 2002.

7 Respectfully Submitted,

8 PRESTON GATES & ELLIS LLP

9
10 By _____
11 Carol S. Arnold, WSBA # 18474
12 Kirk A. Dublin, WSBA # 05980
13 Attorneys for PREMERA, Premera
14 Blue Cross, and Their Affiliated
15 Companies
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BEFORE THE INSURANCE COMMISSIONER
OF THE STATE OF WASHINGTON

In the Matter of the Application regarding
the Conversion and Acquisition of Control
of Premera Blue Cross and its Affiliates

OIC Docket No. G02-45

PROOF OF SERVICE

I, Carol S. Arnold, certify that I served a copy of this document on all parties or
their counsel of record on the date below as follows:

I certify under penalty of perjury under the laws of the State of Washington that
the foregoing is true and correct.

Service To:	Service Perfected By
James T. Odiorne	<input type="checkbox"/> By United States Mail
Deputy Insurance Commissioner	<input checked="" type="checkbox"/> By Legal Messenger Service
Office of the Insurance Commissioner	<input type="checkbox"/> By Hand Delivery
5000 Capitol Boulevard	<input checked="" type="checkbox"/> By Facsimile
Tumwater, WA 98501	<input type="checkbox"/> By E-Mail
Melanie C. deLeon	<input type="checkbox"/> By United States Mail
Assistant Attorney General	<input checked="" type="checkbox"/> By Legal Messenger Service
Office of the Attorney General	<input type="checkbox"/> By Hand Delivery
1125 Washington Street S.E.	<input checked="" type="checkbox"/> By Facsimile
Olympia, WA 98504-0100	<input type="checkbox"/> By E-Mail
Taya Briley	<input type="checkbox"/> By United States Mail
Association of Washington Public Hospital Districts	<input checked="" type="checkbox"/> By Legal Messenger Service
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Jeff Coopersmith	<input type="checkbox"/> By United States Mail
Coopersmith & Associates, Inc.	<input checked="" type="checkbox"/> By Legal Messenger Service
701 Fifth Avenue, Suite 4200	<input type="checkbox"/> By Hand Delivery
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Seattle, WA 98104	<input type="checkbox"/> By Facsimile
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Eleanor Hamburger	<input type="checkbox"/> By United States Mail
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Columbia Legal Services	<input type="checkbox"/> By Hand Delivery
101 Yesler Way, Suite 300	<input type="checkbox"/> By Facsimile
Seattle, WA 98104	<input type="checkbox"/> By E-Mail
Greg Montgomery	<input type="checkbox"/> By United States Mail
Miller Nash LLP	<input checked="" type="checkbox"/> By Legal Messenger Service
4400 Two Union Square	<input type="checkbox"/> By Hand Delivery
601 Union Street	<input type="checkbox"/> By Facsimile
Seattle, WA 98101-2352	<input type="checkbox"/> By E-Mail
Daniel S. Gross	<input type="checkbox"/> By United States Mail
Deborah A. Dorfman	<input checked="" type="checkbox"/> By Legal Messenger Service
David B. Girard	<input type="checkbox"/> By Hand Delivery
Washington Protection & Advocacy System	<input type="checkbox"/> By Facsimile
180 West Dayton, Suite 102	<input type="checkbox"/> By E-Mail
Edmonds, WA 98020	
Margaret M. Peyton	<input type="checkbox"/> By United States Mail
Dina L. Yunker	<input checked="" type="checkbox"/> By Legal Messenger Service
Assistant Attorneys General	<input type="checkbox"/> By Hand Delivery
University of Washington	<input type="checkbox"/> By Facsimile
Health Sciences & Medical Centers Section	<input type="checkbox"/> By E-Mail
D303 Warren G. Magnuson Health Sciences Center	
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Karen Perdue	<input checked="" type="checkbox"/> By United States Mail
Associate Vice President	<input type="checkbox"/> By Legal Messenger Service
University of Alaska	<input type="checkbox"/> By Hand Delivery
PO Box 5160	<input checked="" type="checkbox"/> By Facsimile
Fairbanks, AK 99775	<input type="checkbox"/> By E-Mail

James J. Davis	<input checked="" type="checkbox"/> By United States Mail
Amy McCullough	<input type="checkbox"/> By Legal Messenger Service
Alaska Legal Services Corporation	<input type="checkbox"/> By Hand Delivery
6220 Far Point Drive	<input checked="" type="checkbox"/> By Facsimile
Anchorage, AK 99507	<input type="checkbox"/> By E-Mail

DATED this 11th day of December, 2002.

Carol S. Arnold